12-17-2013

State v. Caudill Respondent's Brief Dckt. 40782

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 40782
Plaintiff-Respondent,	)	
	)	Cassia Co. Case No.
vs.	)	CR-2012-2681
	)	
VESTAL DEAN CAUDILL,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CASSIA

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

Vestal Dean Caudill appeals from his conviction for possession of methamphetamine. Specifically, Caudill challenges the denial of his suppression motion.

Statement of the Facts and Course of the Proceedings

Deputy Bernad observed Caudill driving on a dirt road before Caudill stopped and turned his lights off. (R., p.76.) Bernad approached Caudill's vehicle to ask him "how he was doing" and if he had any identification the officer could see. (Id.) After Caudill gave Bernad his Idaho driver's license, the officer ran a status check and determined Caudill had an active warrant for his arrest. (Id.) While conducting a search incident to Caudill's arrest, the officer located a methamphetamine pipe in Caudill's pant pocket. (Id.)

The state charged Caudill with possession of a controlled substance and possession of paraphernalia. (R., pp.33-35.) Caudill filed a motion to suppress asserting the "the officer lacked probable cause" and had "no articulable nor [sic] objective facts upon which they [sic] could approach and detain the Defendant and subject him to a search in this matter." (9/27/13 Augmentation, p.1.) The state argued in its briefing to the court that the act of the officer approaching Caudill's vehicle did not constitute a stop, but was instead a consensual encounter with no show of force demanding action by Caudill. (R., p.72.)

Following a hearing on the motion to suppress, wherein the officer testified and a recording of the encounter was admitted into evidence, the district court issued an order finding "[w]hen deputy Bernad approached the Defendant, it was a consensual encounter." (R., p.78.) In approaching Caudill, the officer

> did not restrain the Defendant by physical force or by a show of authority. He did not physically confine the Defendant or block an exit route for the Defendant's pickup. He asked brief, permissible questions, and his manner was non-threatening and friendly. He was permitted to ask the Defendant for his identification. Deputy Bernad's conduct during this encounter would not have suggested to a reasonable person that compliance with his requests was required or that the Defendant was not at liberty to go about his business.

(R., pp.78-79.) Because the court concluded the "limited detention" when the officer took Caudill's driver's license was "reasonable because it was brief and it occurred after Deputy Bernad's lawful contact" with Caudill, it denied Caudill's motion to suppress.[1] (R., p.79.) Caudill entered a conditional Alford plea to possession of a controlled substance, reserving his right to challenge the denial of his motion to suppress, and the paraphernalia charge was dismissed. (R., pp.138-153, 171-172.) The court placed Caudill on supervised probation with an underlying sentence of three years with the first year fixed. (R., pp.160-163.)

Caudill timely appealed. (R., pp.173-176.)

[1] The court also found that even if Bernad's conduct had not been lawful, the discover of the valid arrest warrant would have been an attenuating act dissipating any taint and requiring the denial of Caudill's suppression motion. (R., p.79 n.1.)

ISSUE

Caudill states the issue on appeal as:

> Did the district court err when it denied Mr. Caudill's motion to suppress?

(Appellant's brief, p.5.)

The state rephrases the issue as:

Has Caudill failed to show that the district court erred in denying his suppression motion?

ARGUMENT

Caudill Has Failed To Show That The District Court Erred In Denying His Suppression Motion

A. Introduction

The district court denied Caudill's motion to suppress, finding that Caudill was not seized by the officer approaching and asking if he had any identification upon observing Caudill's vehicle parked with the lights off on a dirt road after the officer had just seen Caudill driving down the same dirt road and stop. (R., pp.75-80.) Caudill argues on appeal that despite Idaho Court of Appeals holdings to the contrary in State v. Landreth, 139 Idaho 986, 88 P.3d 1226 (Ct. App. 2004) and State v. Page, 140 Idaho 841, 103 P.3d 454 (2004) the district court erred in denying his motion to suppress as:

> he was unlawfully seized when the deputy took his driver's license, that the detention was unreasonable, and that the discovery of the outstanding warrant for his arrest did not constitute an intervening circumstance sufficient to dissipate the taint of the unlawful search.

(Appellant's brief, p.9.) Caudill's claims fail. A review of the record, in light of the applicable legal standards, supports the district court's determination that the officer approaching Caudill's car parked off of the dirt road was a consensual encounter and the officer was permitted to ask Caudill for identification. As such, the district court did not err when it denied Caudill's motion to suppress.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court defers to the trial court's findings of fact unless clearly erroneous but exercises free review of the trial court's determination as to whether constitutional standards

have been satisfied in light of the facts. State v. Willoughby, 147 Idaho 482, 485-6, 211 P.3d 91, 94-95 (2009); State v. Fees, 140 Idaho 81, 84, 90 P.3d 306, 309 (2004).

C. Caudill Has Failed To Show That The District Court Erred In Denying His Motion To Suppress

Caudill failed to present evidence at the suppression hearing establishing he was seized for purposes of the Fourth Amendment. "When a defendant seeks to suppress evidence allegedly obtained as a result of an illegal seizure, the burden of proving that a seizure occurred is on the defendant." State v. Fuentes, 129 Idaho 830, 832, 933 P.2d 119, 121 (Ct. App. 1997) (citations omitted). Caudill has failed to demonstrate that the district court's denial of the motion to suppress was error, as the record supports a finding that he was not impermissibly seized.

Not all contacts between officers and citizens involve a seizure within the meaning of the Fourth Amendment. See Florida v. Bostick, 501 U.S. 429 (1991); Terry v. Ohio, 392 U.S. 1 (1968); State v. Nickel, 134 Idaho 610, 7 P.3d 219 (2000); State v. Reese, 132 Idaho 652, 978 P.2d 212 (1999); State v. Nelson, 134 Idaho 675, 8 P.3d 670 (Ct. App. 2000); and State v. Clifford, 130 Idaho 259, 939 P.2d 578 (Ct. App. 1997). There are three types of contacts between law enforcement and private citizens: (1) consensual encounters, which are not seizures and, therefore, require no justification; (2) stop/investigative detentions, which are seizures justified by reasonable suspicion; and (3) actual arrest, which are seizures justified by probable cause. State v. Holcomb, 128 Idaho 296, 912

P.2d 664 (Ct. App. 1995); State v. Zubizareta, 122 Idaho 823, 839 P.2d 1237 (Ct. App. 1992); State v. Knapp, 120 Idaho 343, 815 P.2d 1083 (Ct. App. 1991); and State v. Zapp, 108 Idaho 723, 701 P.2d 671 (Ct. App. 1985). A consensual encounter is not a seizure and does not implicate the Fourth Amendment; therefore, an officer does not need to establish reasonable suspicion or probable cause to justify the encounter. See California v. Hodari D., 499 U.S. 621 (1991), and Florida v. Bostick, 501 U.S. 429, 434 (1991).

"Only when an officer, by means of physical force or show of authority, restrains the liberty of a citizen may a court conclude that a seizure has occurred." Zubizareta, 122 Idaho 823, 826, 839 P.2d 1237, 1240 (citing Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968)); see also State v. Cardenas, 143 Idaho 903, 155 P.3d 704 (Ct. App. 2006), and State v. Agundis, 127 Idaho 587, 903 P.2d 752 (Ct. App. 1995). The relevant inquiry in determining whether a seizure occurred is "whether, under all the circumstances surrounding the encounter, a reasonable person would have felt free to leave or otherwise decline the officer's requests and terminate the encounter." State v. Reese, 132 Idaho 652, 653, 978 P.2d 212, 213 (1999) (citation omitted). "'So long as a reasonable person would feel free to disregard the police and go about his business,' an encounter between police and an individual is consensual." State v. Nickel, 134 Idaho 610, 613, 7 P.3d 219, 222 (2000) (quoting Florida v. Bostick, 501 U.S. 429, 434 (1991)).

The district court correctly determined this was a consensual encounter, and no justification is needed for a consensual encounter. The officer's

approaching Caudill and asking him if everything was alright is analogous to a "knock and talk" police investigatory practice, which has clearly been recognized as legitimate. See U.S. v. Gould, 364 F.3d 578, 590 (5th Cir. 2004) (citing U.S. v. Jones, 239 F.3d 716, 720 (5th Cir. 2001)). An officer need not first develop reasonable suspicion that criminal activity is afoot before employing the strategy. Gould, 364 F.3d at 590, Jones, 239 F.3d at 720; see also Florida v. Bostick, 501 U.S. 429, 435 (1991). Where police do not restrict the liberty of individuals in a parked car, they are permitted to approach a parked vehicle and inquire as to what is taking place: "[t]his Court has also previously determined that police have the right to approach a parked vehicle and ask the occupants questions, even if no obvious criminal activity is afoot." State v. Randle, 152 Idaho 860, 865-866, 276 P.3d 732, 737-738 (Ct. App. 2012) (citing Zubizareta, 122 Idaho 823, 827, 839 P.2d 1237, 1241; State v. McAfee, 116 Idaho 1007, 1010, 783 P.2d 874, 877 (Ct. App. 1989).)

Here, the officer parked his car "slightly in front of [Caudill] and off to ... the east of his vehicle" and did not impair Caudill's ability to move his car either forward or back. (Tr., p.10, Ls.5-14.) Additionally, Officer Bernad was alone when he approached Caudill and did not activate his overhead lights, instead only turning on his "rear flashers." (Tr., p.8, Ls.20-22, p.9, Ls.7-9.) There was no threatening presence of multiple officers and no evidence of any physical force by the one officer present. Caudill has failed to demonstrate that the officer made any show of authority or use of physical force to restrain him. Thus, he has failed to demonstrate that the encounter was a seizure.

Further, Officer Bernad was permitted to ask Caudill to see his identification, contrary to Caudill's assertion that "his contact with the deputy became an illegal detention when Deputy Bernad seized his driver's license" (Appellant's brief, p.9):

> The Idaho Supreme Court has determined that a police officer's brief detention of a driver to run a status check on the driver's license, after making a valid, lawful contact with the driver, is reasonable for purposes of the Fourth Amendment.

Landreth, 139 Idaho 986, 990, 88 P.2d 1226, 1230. Here, the officer was engaged in a permissible, consensual encounter with Caudill and was permitted to ask him for identification.

Caudill has failed to demonstrate that he was "seized" in violation of the Fourth Amendment and has necessarily failed to demonstrate error in the district court's denial of his motion to suppress.[2]

[2] Even assuming there was an impermissible detention of Caudill, the discovery of the warrant would have justified his arrest and the ultimate search incident to arrest leading to his current underlying charges. A valid arrest is an intervening circumstance, such that evidence discovered as a result of that arrest is untainted by any unlawfulness in a search and seizure that preceded the lawful arrest. State v. Page, 140 Idaho 841, 845-46, 103 P.3d 454, 458-59 (2004); United States v. Green, 111 F.3d 515 (7th Cir. 1997) (outstanding arrest warrant gives the officer independent probable cause such that, had the officers acted unlawfully, the warrant would constitute an intervening circumstance dissipating the taint of the illegality).

CONCLUSION

The state respectfully requests this Court to affirm the district court's order denying Caudill's motion to suppress.

Dated this 18th day of December, 2013.

NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of December 2013 served a true and correct copy of the attached RESPONDENT'S BRIEF by causing a copy addressed to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm